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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~1311~~ 107

UNITED STATES OF AMERICA,
Appellant,

vs.

ARNOLD HABIG AND JEROME SCHROERING,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

MOTION TO AFFIRM.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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The appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move the Court to affirm the judgment of the district court on the ground that the question presented is so insubstantial as not to need further argument.

ARGUMENT.

The district court correctly held that "the statutory mandate is clear—for the purpose of criminal prosecutions, the last day prescribed for filing shall be determined without regard to any extension of time granted the taxpayer. * * * The statute is not ambiguous, and therefore leaves no

room for construction." (Juris. St. 10, 11.) This was also the holding in *Hull* v. *United States*, 356 F. 2d 919 (5th Cir. 1966); *United States* v. *Doelker*, 211 F. Supp. 663 (N. D. Ohio 1962), *aff'd on another issue*, 327 F. 2d 343 (6th Cir. 1964); *United States* v. *Alper*, 200 F. Supp. 155 (N. J. 1961). *Accord*, *United States* v. *Black*, 216 F. Supp. 645 (W. D. Mo. 1963) and *United States* v. *Scheetz*, 224 F. Supp. 789 (S. D. Ind. 1963).

Whatever the meaning of section 6513(a) in its original context—civil claims for refund or credit instituted by the taxpayer and not the government—it clearly has in its criminal prosecution context the meaning embodied in the holding of the district court. That meaning becomes evident only in the relationship between sections 6513(a) and 6531.

With respect to the offenses charged in both counts dismissed by the district court, the proscribed act is completed upon the filing of a false corporate return. (Juris. St. 3n. 1.) But this conclusion does not answer the ultimate question presented by this appeal: When were the returns filed? The answer to this question is found in the relationship between sections 6513(a) and 6531. Under section 6531 the applicable period of limitation began to run upon "the commission of the offense." That section also provides that "for the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable." Section 6513 sets forth rules by which to determine when returns shall be deemed filed. Thus, when the offense charged is completed upon the filing of a false return, section 6513(a) in conjunction with section 6531 determines when a return is deemed filed.

By its holding the district court applied the full meaning of the last sentence of section 6513(a) in conjunction with section 6531. That sentence provides that "for purposes of

this subsection, the last day prescribed for filing the return . . . shall be determined without regard to any extension of time granted the taxpayer. . . .'' The government contends that this sentence has no meaning except when read with the first sentence, which relates only to returns actually filed before the due date for filing. The last sentence of section 6513(a) is, however, by its own introductory clause (''For purposes of this subsection . . .'') to be given effect co-extensive with the purposes of section 6513(a). These purposes were expanded by the incorporation of that section within the criminal prosecution limitation rules of section 6531. As the court in *United States* v. *Doelker,* 211 F. Supp. 663, 665 (N. D. Ohio 1962), *aff'd on another issue,* 327 F. 2d 343 (6th Cir. 1964), in determining the import of the introductory clause of the last sentence of section 6513(a), stated: ''[I]t becomes painfully clear that one of the 'purposes' of Section 6513(a) is the determination of the commencement of the periods of limitations which are contained in Section 6531.''[1]

The decision of the district court is in harmony with this Court's enunciated principle that criminal statutes of limitations are to be liberally construed in favor of the defendant. *United States* v. *Scharton,* 285 U. S. 518 (1932). This liberal construction is fundamentally different than that accorded defendants in civil cases. Thus the Court of Appeals for the Tenth Circuit recently held, in *Waters* v. *United States,* 328 F. 2d 739 (10th Cir. 1964), that the period of limitation specified by section 6531 constitutes a jurisdictional bar to prosecution, and not an affirmative

1. The government claims that the court in the only decided case in support of its position, *United States* v. *Hensley,* 257 F. Supp. 987 (N. M. 1966), arrived at its holding ''in a well reasoned opinion.'' (Juris. St. 6.) However, the court there concluded that *Doelker* was correctly decided. It stated: ''The Court correctly determined that the starting date of the statute of limitations was April 15. This is clearly provided in the third sentence of section 6513(a).'' *Id.* at 989.

defense, which must be originally pleaded on peril of waiver: "Unlike the statute of limitations in civil cases, it is not a mere limitation upon the remedy, but a limitation upon the power of the sovereign to act against the accused." *Id.* at 743.

None of the government's arguments in opposition to the meaning of section 6513(a) in conjunction with section 6531 are of substance. It resorts to legislative history to find support for its position, but it is the wrong history. (Juris. St. 5.) The statement in the 1942 committee reports cannot throw any light on the meaning of section 6513(a) in criminal cases, not only because its context and purpose was radically different—imposing limitations on actions by taxpayers filing claims for refund or credit—but because at that time there existed no other context, for it was not until 1954 that section 6531 was amended by adding the cross-reference to section 6513. (Juris. St. 5n.3.)[2] Given the expanded purposes of section 6513(a) in its criminal prosecution context, the 1942 legislative history is not relevant.

Next the government argues that the decision of the district court "produces the absurd result that the statute of limitations on an offense involving the *filing* of a false return begins to run before the offense has been committed, *i.e.*, before the return has been filed." (Juris. St. 6.) This argument is negated by the very existence of section 6513(a), which determines when a return is *deemed filed.* Thus the district court correctly held that under that section a return is deemed filed, and therefore the offense completed, not at the actual filing date, but at the original due date. The government in this argument fails to recognize that for the purpose of criminal periods of limitation

2. The 1954 committee reports to section 6531 only reiterate the cross-reference sentence added to it. 3 *U. S. Code Cong. & Ad. News* (83rd Cong. 2d Sess. 1954), 4564, 5237.

the filing of a return is a statutorily defined act; it is not an innately natural or human one. And it is the role of section 6513(a) to define that act for this purpose.

For these reasons it is apparent that the question presented by the government's appeal is unsubstantial: it is merely an attempt to impose, without warrant or reason, an unduly restricted meaning upon section 6513(a) in conjunction with section 6531. It is therefore respectfully submitted that the Court affirm the judgment of the district court without further argument.

Respectfully submitted,

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